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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TODD R.G. HILL

Plaintiff,

vs.

THE BOARD OF DIRECTORS, OFFICERS AND AGENTS AND INDIVIDUALS OF THE PEOPLES COLLEGE OF LAW, et al.,

Defendants.

Case No.: 2:23-cv-01298-JLS-BFM

STATE BAR DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND THE JUDGMENT PURSUANT TO FED. R. CIV. P. 59(e)

I. INTRODUCTION

Plaintiff Todd R.G. Hill's "Motion to Alter or Amend the Judgment Pursuant to Fed. R. Civ. P. 59(e)" should be denied because it is procedurally improper.[1] Contrary to Plaintiff's understanding, no judgment has yet entered in this case. As such, there is nothing to alter or amend. Until such time as judgment is entered, the Motion is premature and should be denied on this basis.

To the extent the Court is inclined to treat the Motion as seeking reconsideration of the Court's April 25, 2025, "Order Denying Reconsideration," (Dkt. 277), the Motion is still defective. The core of Plaintiff's argument appears to be his claim that, prior to its issuance of the Reconsideration Order, the Court failed to consider an April 22, 2025, filing, to which Plaintiff attached an (unauthenticated) February 25, 2025, email. Plaintiff postulates that because this filing did not appear on the docket at the time the Reconsideration Order was entered, the Court did not consider it in ruling on the Reconsideration Motion. Even assuming *arguendo* that Plaintiff's claim in this regard is true, Plaintiff does not explain why the substance of the subject email justifies reconsideration pursuant to Local Rule 7-18. He neither addresses the materiality of the email to the issues adjudicated in connection with the Reconsideration Order, nor explains why the Court should consider the email at this juncture, given it does not present any new or previously unknown facts. (The email is dated approximately one month prior to the Court's dismissal of the State Bar Defendants, as well as the date of his first reconsideration request. *See* Dkt. 248, 243.)

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[1] The instant Opposition addresses the original Motion (Dkt. 286), as well as Plaintiff's subsequent, belated filing, entitled "Plaintiff's Request for Judicial Notice and Supplemental Brief in Support of Rule 59(e) Motion to Alter or Amend Judgment" (Dkt. 298). Plaintiff's belated filing was not entered until May 12, 2025. As used herein, the word "Motion" should be understood to collectively refer to both the original Motion, as well as the supplemental filing.

As to the only other arguments Plaintiff proffers in support of the Motion—namely, that the Court failed to properly evaluate his equal protection claim and failed to apply the *Ex Parte Youn*g exception in the instant circumstances—Plaintiff has repeatedly raised these arguments in connection with his prior filings. These arguments have likewise been considered and rejected by the Court on multiple occasions. Plaintiff's attempt to re-assert the same arguments in support of what is essentially a *second* request for reconsideration is not well-taken.

At bottom, whether the Motion constitutes a request that the Court to reconsider, alter or amend the Reconsideration Order, the Motion is procedurally inadequate and should therefore be denied.[2]

II. LEGAL STANDARD

Federal Rule of Civil Procedure 59(e) permits a party to file a motion to alter or amend a judgment "no later than 28 days after entry of the judgment." Under Federal Rule of Civil Procedure 58, a judgment must be set forth in separate document and is deemed entered when, whichever comes first, the judgment itself is filed as a separate document or 150 days passes from the court's ruling.

Rule 7-18 provides, in relevant part, as follows:

> A motion for reconsideration of an Order on any motion or application may be made only on the grounds of (a) ***a material difference in fact*** or law from that presented to the Court that, in the exercise of reasonable diligence, ***could not have been known to the party moving for reconsideration at the time the Order was entered***, or (b) the emergence of ***new***

[2] The State Bar Defendants are the State Bar of California, Leah Wilson, Natalie Leonard, Brandon N. Stallings, Melanie M. Shelby, Ruben Duran, Hailyn Chen, Audrey Ching, Arnold Sowell, Jr., Mark W. Toney, Paul A. Kramer, Jean Krasilnikoff, Ellin Davtyan, Louisa Ayrapetyan, George S. Cardona, Devan McFarland, and Enrique Zuniga. While the State Bar was not named as a defendant in Plaintiff's Third Amended Complaint, the Order adopted the recommendation in the Report to dismiss with prejudice the State Bar, along with the individual State Bar Defendants, presumably so that Plaintiff could not attempt to resurrect claims against the State Bar in a future complaint. *See, e.g.*, Report at 23, n.5.

> ***material facts*** or a change of law occurring after the Order was entered, or (c) a manifest showing of a ***failure to consider material facts presented to the Court before the Order was entered***. No motion for reconsideration may in any manner ***repeat any*** oral or ***written argument made*** in support of, or ***in opposition to, the original motion.***

Emphasis added.

For the reasons discussed herein, Plaintiff cannot establish a basis for relief under Rule 59 or Rule 7-18 and the Motion should be denied.

III. LEGAL ARGUMENT

A. The Motion Is Premature and Should Be Denied Because No Judgment Has Entered in This Case

Although Rule 59(e) allows a party to seek an order altering or amending a judgment, it stands to reason that where no judgment has entered, no such request can be made.

In the present case, although the Court has entered an order dismissing the State Bar Defendants from this litigation (Dkt. 248), a separate document setting forth the judgment has not yet been entered, as required by Rule 58. Until such time as judgment is entered, Plaintiff cannot file a motion pursuant to Rule 59(e) for the purpose of altering or amending a nonexistent judgment. As the relief Plaintiff is seeking herein is premature, the Motion is procedurally improper and his request should be denied.

B. To the Extent the Court Is Inclined to Treat the Motion As a Second Reconsideration Request, the Motion Should Still Be Denied Because It Does Not Comport With Rule 7-18.

Rule 7-18 limits the type of information to be considered on reconsideration to "material" facts that are "new" or which "could not have been known to the party moving for reconsideration at the time the Order was entered." It also

expressly prohibits a request for reconsideration that merely repeats a prior written argument. L.R. 7-18.

Here, Plaintiff seeks reconsideration based upon a February 25, 2025, email, which Plaintiff contends he received from the State Bar and which purportedly "acknowledg[es] [his] compliance with [bar] exam eligibility criteria and confirm[s] his participation in the February 2025 California Bar Exam." Opp., 5:24-27. Assuming the email is admissible (it is not, given Plaintiff's failure to properly authenticate this document) and has any bearing on whether his Third Amended Complaint stated a claim against the State Bar Defendants (it does not, given that the email merely acknowledges that some individuals sitting for the February 2025, California Bar Exam may have experienced technical issues), the email is not new, nor was it unavailable to Plaintiff in March 2025, at which time, the Court dismissed the State Bar Defendants from this lawsuit. Indeed, Plaintiff was apparently in possession of the email when he initially opposed the State Bar Defendants' dismissal, as well as when he filed his original reconsideration motion. Yet, he failed to bring the email to the Court's attention at that time. Significantly, doing so would not have made a difference. As discussed below, the content of the email has no bearing on Plaintiff's ability to state a claim against the State Bar Defendants or the legal deficiencies outlined in the State Bar Defendants' motion to dismiss. While Plaintiff makes much of the Court's purported failure to timely docket the entry containing the email, he offers no explanation for his delay presenting the email to the Court.

Beyond this, Plaintiff presents no argument as to the alleged materiality of the February 2025 email. As a threshold matter, the entire premise of Plaintiff's argument—namely, that extrinsic materials can necessarily be considered on a motion challenging the pleadings—is wrong. "Generally, district courts may not consider material outside the pleadings when assessing the sufficiency of a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure." *Khoja v.*

Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir. 2018). Plaintiff has not established that the document at issue is properly the subject of judicial notice or that it was incorporated by reference (and it was not).

Even if the email could have been considered in connection with the motion to dismiss, Plaintiff does not demonstrate that the contents of the email are in any way relevant to his claims against the State Bar Defendants, or their dismissal from the case. The substance of the email merely notes that some February 2025, California Bar Exam examinees may have experienced technical difficulties in sitting for the first day of the exam. Plaintiff neither establishes he was one such test-taker, nor explains why these alleged technical difficulties warrant reconsideration of the State Bar Defendants' dismissal. Of particular note is the fact that the email's acknowledgement of alleged technical difficulties occurred more than two years *after* Plaintiff first initiated the above-captioned litigation. This timeframe further underscores the lack of any link whatsoever between the email and Plaintiff's claims against the State Bar Defendants. Rather, it is clear that in seeking to rely on this email, Plaintiff is grasping at straws. Absent a showing of materiality (which Plaintiff has not demonstrated in filing his Motion), the email does not provide a basis for reconsideration.[3]

[3] In addition to the unauthenticated February 25, 2025, email, Plaintiff's supplemental filing references two "new" (unauthenticated) documents, including a May 5, 2025, State Bar memorandum addressing possible remediation measures in relation to the February 2025, California Bar Exam, as well as spreadsheets "contain[ing] detailed demographic and institutional bar passage data from 2015 through 2025." In the interests of brevity, the State Bar Defendants do not individually address each of these belatedly filed exhibits. However, the State Bar Defendants' arguments regarding the immateriality of the February 25, 2025, email extends to these documents. Aside from the fact that these supplemental materials constitute extrinsic evidence that is not properly considered at the pleading stage, the documents have no relevance to the State Bar Defendants' dismissal from the instant proceedings. Pointedly, the Motion does not explain how or why the State Bar's discussion of non-scoring remediation measures in connection with the February, 2025, California Bar Exam, along with an analysis

As to the only other arguments Plaintiff proffers in support of the Motion—namely that the Court incorrectly evaluated Plaintiff's equal protection claims, as well as application of the *Ex Parte Young* exception in the instant circumstances—these are not new theories, as Plaintiff asserts. The record is replete with Plaintiff's references to these contentions. *See*, generally, Dkt. 193, 217. The record is likewise clear that the Court has carefully considered, and rejected these claims on their merits. *See* generally, Dkt. 213, 248, 277. Rejection is once again appropriate at this juncture, since restating previously raised arguments is insufficient to support a reconsideration request.

In sum, the Motion, to the extent it is to be construed as a second request for reconsideration, fails to set forth any basis justifying reconsideration pursuant to Rule 7-18 and should therefore be denied.

IV. CONCLUSION

For the foregoing reasons, Plaintiff has failed to establish that he is entitled to seek relief in connection with the Court's April 25, 2025, Reconsideration Order pursuant to Rule 59(e) or Rule 7-18. Accordingly, the Motion should be denied in its entirety.

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of bar passage rates throughout the past ten years, addresses the defects in Plaintiff's prior pleadings. The Court previously noted that Plaintiff's reliance on similar "evidence" was insufficient to overcome dismissal. *See, e.g.* Dkt. 213, 15:12-16:5 (Interim Report) ("Plaintiff points to statistical data establishing a low pass-rate for African-American students taking the First Year Law Student Exam . . . But there are no allegations correlating the State Bar's non-interference policy with the low pass-rate.")

Dated: May 14, 2025

STATE BAR OF CALIFORNIA
OFFICE OF THE GENERAL COUNSEL

By: *HELENE A. SIMVOULAKIS-PANOS*
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DECLARATION OF SERVICE

I, Ryan Sullivan, hereby declare: that I am over the age of eighteen years and am not a party to the within above-entitled action, that I am employed in the City and County of San Francisco, that my business address is The State Bar of California, 180 Howard Street, San Francisco, CA 94105.

On May 14, 2025, following ordinary business practice, I filed via the United States District Court, Central District of California electronic case filing system, the following:

STATE BAR DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND THE JUDGMENT PURSUANT TO FED. R. CIV. P. 59(e)

Participants in the case who are registered CM/ECF users will be served.

See the CM/ECF service list.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, on May 14, 2025, 2025.

Ryan Sullivan

Ryan Sullivan